No. 90-437 (2)

In The

Supreme Court of the United States

October Term, 1990

HARRIS A. GROTE,

Petitioner,

v.

TRANS WORLD AIRLINES, INC., FRED VANHOOSEN, DOUGLAS HEGGIE, LAWRENCE MARINELLI, M.D., BRADFORD BERG, and DOES 1 through 100, inclusive,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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October 15, 1990

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QUESTION PRESENTED

A collective bargaining agreement, entered into pursuant to the Railway Labor Act between respondent and petitioner's union, gives respondent the express right to require petitioner to obtain a pilot's medical certification if he is physically capable of meeting the required physical standards.

The question presented is:

Did the court of appeals err in affirming the district court's holding that the mandatory and exclusive dispute resolution procedures required by the Railway Labor Act preempt petitioner's state common law retaliatory discharge claim that he was discharged for refusing to obtain medical certification, where the adjudication of that claim requires the interpretation of, or alternatively, is arguably governed by, the collective bargaining agreement?

LIST OF PARTIES AND AFFILIATED CORPORATIONS

All parties in the courts below are listed in the caption.

Pursuant to Supreme Court Rule 29.1, corporate party Trans World Airlines, Inc. provides the following list of all parent and subsidiary companies (except wholly owned subsidiaries):

Parent company: TWA Airlines, Inc.

Subsidiary companies (except wholly owned subsidiaries): The Travel Channel, Inc.

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The oral opinions and written orders of the District Court are unreported, and appear at pages 10a to 23a of the Appendix to the Petition ("Pet. App. 10a-23a"). The opinion of the Court of Appeals is reported at 905 F.2d 1307, and is set forth at Pet. App. 1a to 9a.

STATUTES INVOLVED

Section 2 of the Railway Labor Act ("RLA"), 45 U.S.C. § 151a, provides, in pertinent part:

> The purposes of [this Act] are to (1) avoid any interruption to commerce or to the operation of any carrier engaged therein; . . . (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; . . . [and] (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements governing rates of pay, rules, or working conditions.

Section 2 First of the RLA, 45 U.S.C. § 152 First, provides, in pertinent part:

> It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and *to settle all disputes, whether arising out of the application of such agreements or otherwise,* in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof. (Emphasis added)

Section 204 of the RLA, 45 U.S.C. § 184, provides, in pertinent part:

> The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions . . . shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate adjustment board . . . with a full statement of facts and all supporting data bearing upon the disputes. . . .

STATEMENT OF THE CASE

A. Facts.

According to the facts properly before the district court, petitioner Harris Grote was employed as a pilot by respondent Trans World Airlines, Inc. ("TWA"). Grote was employed pursuant to a collective bargaining agreement between TWA and Grote's union, the Air Line Pilots Association ("ALPA"). Section 16(I) of this collective bargaining agreement gave TWA the express contractual right to require that Grote maintain a current first-class Federal Aviation Administration ("FAA") medical certificate "whenever [Grote was] capable of meeting the physical standards required therefor."

In January 1984, Grote complained of chest pains. Later that year, the FAA declined to renew Grote's medical certificate based on his complaints of chest pain.[1] Thereafter, both the FAA and TWA told Grote that an objective test (an angiogram) could accurately determine whether his alleged chest pains were caused by a heart condition. Grote steadfastly refused to submit to this test and failed to provide any objective evidence that he had a heart condition. Nevertheless, TWA allowed Grote to collect disability benefits for an extended period.

After Grote's absence from work for over a year without providing any objective evidence of his alleged heart condition, TWA advised Grote that he was expected to obtain his medical certification and return to active flying in January 1986. Grote continued to refuse to provide objective evidence of a heart condition, and after an investigation pursuant to the collective bargaining agreement, his employment was terminated.

Grote's union challenged his discharge by filing a grievance pursuant to the collective bargaining agreement. This grievance resulted in a three-day arbitration before the System Board of Adjustment. Extensive evidence was presented concerning Grote's medical

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[1] Petitioner's Statement of Facts erroneously states that the FAA declined to recertify him "as a result of his heart condition." Pet. 2. Grote's first amended complaint actually alleged the FAA informed him that his certificate was being suspended "as a result of his suspected heart condition." In fact, because of his refusal to undergo testing, it has never been established as a medical fact that Grote has a heart condition.

condition, and whether his failure to substantiate his medical claim and to undergo objective testing permitted TWA to terminate his employment. This grievance was resolved in Grote's favor and he was awarded all the relief he sought.[2]

B. Proceedings Below.

Grote's original complaint was filed in California Superior Court on March 12, 1987. The original complaint contained a claim for "wrongful termination." This claim included an allegation that Grote's discharge violated public policy and breached the TWA/ALPA collective bargaining agreement. Grote also alleged that he had grieved his discharge pursuant to the collective bargaining agreement but that the resulting arbitration "did not provide a full and complete remedy."

Respondents removed the action to federal district court, on the ground that Grote's claims arose under the RLA. Respondents then moved to dismiss each of Grote's claims based on RLA preemption. Grote responded by voluntarily dropping his claim that TWA breached the collective bargaining agreement, and arguing that his remaining claims were not preempted by the RLA since they were "independent" of the collective bargaining agreement.

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[2] The arbitration award rescinded Grote's termination and reinstated his medical leave status. Grote's separate grievance arising out of TWA's refusal to grant him a medical disability retirement is currently pending before the Retirement Board, in an arbitration procedure established under the collective bargaining agreement.

The district court granted respondents' motion. It found that Grote's claims constituted a "minor dispute" arguably governed by the TWA/ALPA collective bargaining agreement. Pet. App. 14a. The court opined that each claim alleged a violation of the collective bargaining agreement and it would not be possible to resolve the merits of any of the claims in Grote's complaint solely by construing the public policy allegedly contravened by his termination. Pet. App. 15a.

Grote then filed an amended complaint. Grote claimed that his alleged "retaliatory discharge" violated California public policy relating to safe air travel. In addition, Grote dropped his contract claim, and added a claim that his alleged heart condition arose out of his employment with TWA and that the Federal Employers Liability Act ("FELA") should be extended to cover airline as well as railroad employees.[3] Respondents filed another motion to dismiss, asserting that Grote's claims, although artfully pleaded to avoid reference to the collective bargaining agreement, were actually governed by that agreement and therefore preempted by the RLA.

In his opposition to the motion to dismiss, Grote relied heavily on *Lingle v. Norge*, 486 U.S. 399 (1988), in which this Court held that a state law claim for retaliatory discharge was not preempted by section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 ("section 301"), since that claim could be adjudicated without

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[3] This claim, dismissed because FELA does not apply to airlines, is not presented in the Petition.

interpreting "just cause" language in a collective bargaining agreement.

In reply, respondents argued that *Lingle* did not apply because *Lingle* arose under section 301, not the RLA. Respondents further argued that Grote's claims were preempted even under *Lingle* because his public policy allegations could not be adjudicated without interpreting section 16(I) of the TWA/ALPA collective bargaining agreement, which gave TWA the contractual right to require that a pilot maintain his medical certificate "whenever the pilot is capable of meeting the physical standards required therefor."[4]

The district court granted the motion to dismiss. The court opined that the adjudication of Grote's claims would involve the interpretation and application of section 16(I) of the TWA/ALPA collective bargaining agreement. Pet. App. 22a. The court found that Grote's state claims were therefore inextricably intertwined with the agreement, and the federal interests in resolving the dispute under the RLA mechanisms outweighed any state interest in Grote's claim. Pet. App. 22a-23a. Accordingly, the action was dismissed with prejudice. Pet. App. 23a.

The Ninth Circuit Court of Appeals affirmed. It observed that section 16(I) of the TWA/ALPA collective bargaining agreement dealt with TWA's ability to require any of its pilots, including Grote, to maintain a current

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[4] The Statement of Proceedings Below in the Petition fails to inform the Court that in both the district court and the court of appeals, respondents argued that Grote's retaliatory discharge claim was preempted even under the *Lingle* standard. *See* Pet. 5-7.

medical certificate. Pet. App. 5a. Thus, the court concluded, Grote's retaliatory discharge claim was "at least 'arguably governed' by paragraph 16(I) of the agreement." Pet. App. 5a.

The court distinguished *Lingle* as inapposite because that decision defines preemption under section 301. Consequently, the court did not analyze what result would obtain if a *Lingle* preemption analysis were applied to Grote's claims. The court merely held that because Grote's claims were at least arguably governed by the collective bargaining agreement and because they were implicitly founded on a wrongful termination claim, the RLA required that the grievance and arbitration procedure in the collective bargaining agreement was Grote's exclusive remedy. Pet. App. 9a.

The court contrasted the preemptive scope of the RLA and section 301. Quoting the statute, the court noted that Congress enacted the RLA dispute resolution provisions specifically "to avoid any interruption to commerce," and to provide for the "prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of [collective bargaining] agreements." Pet. App. 6a.

In addition, the court emphasized that the RLA requires collective bargaining agreements in the rail and air industries to have specific dispute resolution mechanisms, evidencing Congress' intent to keep railroad (and

airline)[5] labor disputes out of the courts. Pet. App. 6a. On the other hand, the court noted, section 301 does not contain any requirement for contractual dispute resolution mechanisms, but merely states that "suits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States." Thus, the court concluded, the RLA's preemptive force appears on the face of the statute whereas section 301 preemption is judicially imposed. Pet. App. 6a-7a.

Finally, the court distinguished *Atchison, T. & S.F. Ry. v. Buell,* 480 U.S. 557 (1987), another case upon which Grote relied. The Court noted that in *Buell,* this Court considered the interplay between two federal statutes, and Congress' power to limit the reach of its own laws. The court rejected Grote's contention that *Buell* suggests that Grote could undermine the preemptive scope of a federal statute by circumventing congressional preemption with claims grounded in state law. Pet. App. 7a.

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[5] The RLA originally applied only to railroads. Parts of the RLA, including the dispute resolution provisions, were amended to cover airlines in 1936. *See* RLA Section 201, 45 U.S.C. § 181.

REASONS FOR DENYING THE WRIT

I

THE DECISION BELOW IS CONSISTENT WITH PRIOR DECISIONS OF THIS COURT HOLDING THAT RLA PREEMPTION OF "WRONGFUL DISCHARGE" CLAIMS IS BROADER THAN SECTION 301 PREEMPTION

A. The Holding of the Court Below That Petitioner's Wrongful Discharge Claim Is Preempted By the RLA Follows a Consistent Line of This Court's Decisions.

In *Andrews v. Louisville & Nashville R. Co.*, 406 U.S. 320 (1972), a seminal RLA preemption case, this Court held that the RLA preempted an employee's state law wrongful discharge claim. Justice Rehnquist, expressing the views of seven members of the Court, wrote:

> [S]ince the compulsory character of the administrative remedy provided by the Railway Labor Act for disputes such as that between petitioner and respondent stems not from any contractual undertaking between the parties but from the Act itself, the case for insisting on resort to those remedies is if anything stronger in cases arising under that Act than it is in cases arising under § 301 of the LMRA.

Andrews, 406 U.S. at 323. The decision of the court below adheres closely to this analysis.

As early as 1965, this Court held that a dispute about whether an employee subject to the RLA is medically qualified to perform his job is a "minor dispute" subject to the exclusive arbitration procedures of the RLA.[6]

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[6] Under the "major/minor" dispute dichotomy which has arisen under the RLA, the so-called "minor disputes" are "all

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Gunther v. San Diego & Arizona Eastern Ry. Co., 382 U.S. 257 (1965). The *Gunther* decision discussed this Court's prior holdings as to the "mandatory," "exclusive" and "complete and final means for settling disputes" under the RLA. This Court held that the resolution of the dispute concerning an employee's removal from service because of health had been "finally, completely and irrevocably" resolved by the Adjustment Board required by the RLA. *Gunther*, 382 U.S. at 264.

Following *Andrews*, this Court reaffirmed the breadth and strength of RLA preemption. In *Union Pacific R. Co. v. Sheehan*, 439 U.S. 89, 94 (1978), this Court emphasized that to further its goal of ensuring stability in labor-management relations in the important national industries covered by the RLA, Congress considered it "essential to keep these so-called 'minor disputes' within the Adjustment Boards and out of the courts."

In 1978, this Court denied certiorari in *Magnuson v. Burlington Northern, Inc.*, 576 F.2d 1367, 1369 (9th Cir. 1978), *cert. denied*, 439 U.S. 930, in which the Ninth Circuit held that where an employee's basic injury is wrongful discharge, the complaint involves a "minor dispute"

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disputes" growing out of either "grievances" or the "interpretation or application of agreements covering rates of pay, rules or working conditions," 45 U.S.C. § 151a; thus the plain language of the RLA encompasses not only claims based upon an express term of the collective bargaining agreement, but also those "founded upon some incident of the employment relation . . . independent of those covered by the collective agreement . . . . " *Elgin, Joliet & Eastern Ry. v. Burley*, 325 U.S. 711, 723 (1945).

which must be arbitrated following the procedures of the RLA.

Further, this Court has, after *Lingle*, denied certiorari in an RLA preemption case which is indistinguishable from petitioner's claim. In *McCall v. Chesapeake & Ohio Ry. Co.*, 844 F.2d 294 (6th Cir. 1988), *cert. denied*, 488 U.S. 879, the court held that a state claim for statutory discrimination based on a physical handicap was preempted by the RLA, because the underlying dispute concerned the employee's physical ability to perform an important job function.[7]

The employee in *McCall* petitioned this Court for a writ of certiorari relying extensively on an argument that *Lingle* applied to the RLA and that under *Lingle* his state law claim was not preempted because it was "independent" of the collective bargaining agreement. *See* Petition For Writ of Certiorari, October Term, No. 88-5, Reasons for Granting Writ, at pp. 14-19. In this case, petitioner makes essentially the same argument made by the petitioner in *McCall*.

Certiorari was also denied in *Jackson v. Consolidated Rail Corp.*, 717 F.2d 1045 (7th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984). In *Jackson*, the Seventh Circuit Court of Appeals, relying on *Andrews*, held an employee's state

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[7] While the *McCall* court correctly distinguished RLA preemption from section 301 preemption based upon the underlying purposes of the statutes involved, it noted that the employee's claim was substantially dependent upon an analysis of the terms of a labor agreement, and therefore would be preempted even under a section 301 preemption analysis. *McCall*, 844 F.2d at 300-301.

law retaliatory discharge claim preempted by the RLA. The court contrasted RLA preemption and preemption under the National Labor Relations Act ("NLRA"). The court noted that since the RLA makes any grievance arising out of a collective bargaining agreement subject to the RLA's exclusive remedies, it "follows from this difference that a state claim is more likely to impinge on an area of exclusive administrative jurisdiction under the RLA than under the NLRA." *Jackson*, 717 F.2d at 1052.

B. The Court Below Correctly Contrasted the RLA and Section 301 Based Upon the Purposes of the Statutes.

The court below correctly reasoned that preemption of state law claims by the RLA and by section 301 is different because the purposes served by preemption under these statutes differ. In *Lingle*, this Court, citing *Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962), reaffirmed that the purpose of section 301 preemption of state law claims is to ensure uniform interpretation of collective bargaining agreements by federal courts. *Lingle*, 486 U.S. at 403-404. Given this underlying purpose, *Lingle's* observation that the scope of section 301 preemption is limited to state law claims actually requiring interpretation of the collective bargaining agreement, is logical.

The RLA, on the other hand, has the additional purpose of keeping employment disputes out of the courts. The RLA was intended by Congress to ensure prompt and speedy resolution of labor disputes in the railroad and airline industries. The purposes of the RLA, which are contained in the text of the statute itself, include (1)

avoiding any interruption to commerce or to the operation of any carrier engaged therein, (2) providing for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions, and (3) providing for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements governing rates of pay, rules, or working conditions. 45 U.S.C. § 151a.

These specialized purposes of the RLA, which are not a consideration in section 301 preemption cases, make clear why RLA preemption is stronger than section 301 preemption. This conclusion is further supported by the fact that Congress provided in the RLA for a comprehensive scheme of dispute resolution mechanisms, including arbitration, and for extremely limited judicial review of Adjustment Board awards. *See* 45 U.S.C. § 153 First (q).[8]

In contrast, section 301 preemption was judicially created. In *Lucas Flour,* this Court first held that the need for uniformity in interpreting collective bargaining agreements required that section 301 preempt state law claims interfering with this important federal labor policy.

Thus, petitioner's argument that there is no basis for the court of appeals' observation that Congress intended to treat rail and air employees differently than employees in other industries is incorrect. To avoid any interruption

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[8] This Court has observed that judicial review of the mandatory arbitration awards under the RLA is "among the narrowest known to law." *Union Pacific R. Co. v. Sheehan,* 439 U.S. 89, 91 (1978).

in the important national transportation industry, in 1926 Congress enacted the RLA – the first comprehensive scheme of federal labor laws in any industry. This statutory scheme requires that all employee disputes growing out of grievances or out of the interpretation or application of collective bargaining agreements, including wrongful discharge claims, be channeled to exclusive RLA dispute resolution procedures. When Congress enacted the NLRA around a decade later in 1935, it chose not to require mandatory dispute resolution – reserving this requirement for the national transportation industry.

C. The Court Below Correctly Distinguished Cases Defining the Relative Scope of Federal Statutes.

In *Jackson, supra,* the court disposed of an argument advanced here by petitioner, that *Atchison, Topeka & S.F. Railway Co. v. Buell,* 480 U.S. 557 (1987) is part of a line of cases including *Barrentine v. Arkansas-Best Freight System,* 450 U.S. 728 (1981) suggesting that this Court will allow a state retaliatory discharge claim to proceed despite a conflict with an RLA collective bargaining agreement. In *Jackson,* the court stated the argument that "Jackson's claim is separately grounded in a state cause of action is immaterial because it is only federal statutory rights that have been held, under cases such as *Barrentine, Henley, Conrad* and *Johnson,* to rebut the preemption of the RLA." *Jackson,* 717 F.2d at 1051. *Buell,* although it arose after the *Jackson* decision, is consistent with this reasoning. Like *Barrentine* and the other cited cases, *Buell* merely defined the relative scope of potentially overlapping federal statutes, which Congress has absolute authority to regulate. *See also, Lewy v. Southern Pacific Transp. Co.,* 799 F.2d 1281, 1291 (9th Cir. 1986). Thus, the court below correctly distinguished *Buell.*

II

DISMISSAL OF PETITIONER'S CLAIM BASED ON RLA PREEMPTION IS THE CORRECT RESULT BECAUSE HIS CLAIM IS PREEMPTED EVEN UNDER *LINGLE*.

The "Question Presented" by petitioner asserts that if he were employed in an industry subject to section 301 rather than the RLA, his retaliatory discharge claim would not be preempted. Petitioner assumes incorrectly that under the section 301 preemption analysis required by *Lingle*, his claim is "independent" of the TWA/ALPA collective bargaining agreement and therefore not preempted.

This Court need not reach the issue of whether the section 301 preemption analysis required by *Lingle* is applicable in all RLA cases – or even in this case. The district court dismissed petitioner's complaint based upon its finding that the adjudication of his claims "would involve interpretation and application of section 16(I) of the TWA-Union collective bargaining agreement in this case." This finding brings petitioner's claims squarely within the preemptive scope of section 301 as defined by *Lingle*.

Since the Ninth Circuit Court of Appeals correctly distinguished *Lingle* as "inapposite," the court did not opine on what result would obtain if a *Lingle* preemption analysis were applied. The court did note, however, that petitioner's retaliatory discharge claim was "at least arguably governed by paragraph 16(I) of the agreement." Pet. App. 5a. Thus, the court's decision is not inconsistent

with a finding that petitioner's claim is inextricably intertwined with the collective bargaining agreement, and therefore preempted even under the preemption analysis required by *Lingle* in section 301 cases.

In fact, as respondents argued to the courts below, petitioner's retaliatory discharge claim is preempted even under a *Lingle* preemption analysis because the claim requires the interpretation of the TWA/ALPA collective bargaining agreement. Unlike *Lingle*, petitioner's claim here grows out of a dispute over his physical ability to obtain his medical certificate, an important job requirement. TWA's right to require petitioner to obtain medical certification if he was physically capable of doing so is governed by section 16(I) of the collective bargaining agreement. It would be impossible to adjudicate petitioner's retaliatory discharge claim without interpretation of the TWA/ALPA collective bargaining agreement. Thus, even under *Lingle*, petitioner's claim is preempted.

Moreover, petitioner's suggestion that his claim is based upon "non-negotiable" state law rights is unpersuasive. In *Lingle*, this Court noted that the so-called "non-negotiable" status of a state law right does not prevent section 301 preemption: "It is conceivable that a State could create a remedy that, although non-negotiable, nonetheless turned on the interpretation of a collective bargaining agreement for its application. Such a remedy would be preempted by § 301." *Lingle*, 486 U.S. at 407, n. 7.

III

THIS CASE DOES NOT PRESENT A CONFLICT WITH ANY DECISION OF THIS COURT

Grasping at straws, petitioner argues that the decision below conflicts with a decision of this Court by citing the summary disposition in *Pan American World Airways v. Puchert*, 472 U.S. 1001 (1985), *dismissing appeal from Puchert v. Agsalud*, 677 P.2d 449 (Haw. 1984). *Puchert* does not present a conflict with the decision below.

In *Puchert*, the Hawaii Supreme Court held that a retaliatory discharge claim, brought pursuant to a Hawaii statute, was not preempted by the RLA. The Hawaii Supreme Court did not decide the issue of the relative scope of RLA and section 301 preemption. Instead, its conclusion that the employee's claim was not preempted by the RLA was based upon its finding that "the resolution of the dispute in question does not hinge on the application or interpretation of the collective bargaining agreement between Pan Am and Puchert's union." *Puchert*, 677 P.2d at 454.

Petitioner's claim here is distinguishable from the employee's claim in *Puchert*. In *Puchert*, the court specifically found that the employee's claim did not require the interpretation or application of the collective bargaining agreement. Here, the decisions of both courts below are consistent with a finding that petitioner's claim requires the interpretation of specific language in the collective bargaining agreement.

Moreover, the unique language in the TWA/ALPA agreement makes the factual situation here different from *Puchert*. The employer in *Puchert* relied on a "just cause"

clause as the basis for an alleged conflict between the retaliatory discharge claim and the labor agreement. *Puchert*, Motion to Dismiss or Affirm, October Term, Case No. 83-1952, at page 9.[9] In contrast, the courts below did not rely on a "just cause" clause, but found that petitioner's claim implicated section 16(I) of the TWA/ALPA collective bargaining agreement, which directly relates to petitioner's ability to perform his job and TWA's right to require him to obtain medical certification.

Finally, Puchert's claim did not present the danger of conflict with other federal policies. Section 16 of the TWA/ALPA collective bargaining agreement, which addresses physical qualifications of pilots and controls pilot medical certification, necessarily implicates an intricate framework of regulations promulgated by the Federal Aviation Administration. *See*, 14 C.F.R. § 67.1 *et seq.* (federal regulations governing medical certification for pilots operating in interstate commerce). Here, allowing petitioner's claim to go forward would allow the courts of all 50 states to threaten the uniform federal control of the important area of regulation of physical standards for commercial airline pilots. *See French v. Pan Am Express, Inc.*, 869 F.2d 1 (1st Cir. 1989) (Rhode Island statute regulating drug testing as applied to airline pilots preempted by extensive federal scheme for flight certification).

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[9] *Puchert* is therefore similar to *Lingle*, where the employer relied solely on a "just cause" clause as the basis for its claim that the labor agreement was implicated by the retaliatory discharge claim. *Lingle*, 486 U.S. at 413.

IV

THE DECISION BELOW DOES NOT CREATE A CONFLICT IN THE CIRCUITS

Petitioner claims the holdings of the courts below are contrary to the rule followed by a majority of lower courts. However, in his attempt to create the appearance of a conflict, petitioner misstates the holdings of the courts below. He states the courts below held that, despite *Lingle*, state law claims are preempted by the RLA whether or not the collective bargaining agreement is implicated. Pet. 8-9. Neither court below so held. Both courts held that the RLA preempted petitioner's claim specifically because it implicated section 16(I) of the TWA/ALPA collective bargaining agreement.

None of the cases cited by petitioner (see Pet. 9, n. 5) evidence any conflict in the circuits with respect to the issue presented by the Petition. All of the cases cited by petitioner as "holding" that section 301 preemption principles are applicable in RLA cases are distinguishable on their facts,[10] or merely evidence that, since RLA preemption is facially similar to section 301 preemption, in some cases courts have used section 301 and RLA principles

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[10] *See, e.g., Kidd v. Southwest Airlines Co.*, 891 F.2d 540 (5th Cir. 1990) (supervisory employee not covered by collective bargaining agreement); *Dibble v. Grand Trunk Western R. Co.*, 699 F.Supp. 123 (E.D. Mich. 1988) (enjoining employer from discharging employee pending completion of RLA grievance proceeding); *Gendron v. Chicago & N.W. Transp. Co.*, 190 Ill.App.3d 301, 546 N.E.2d 721 (1989) (suit by employee to enjoin sale of railroad line preempted by the RLA).

interchangeably.[11] While it may be appropriate for courts to rely on general principles developed under section 301 in the RLA context, this Court has cautioned that "even rough analogies [between the RLA and the NLRA] must be drawn circumspectly, with due regard for the many differences between the statutory schemes." *Brotherhood of Railway Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 383 (1969). Thus, petitioner has not demonstrated any conflict requiring this Court's attention.

* * *

For all these reasons, review by this Court is unnecessary. The decision below is correct. RLA preemption of state common law wrongful discharge claims is well settled by decisions of this Court and lower courts. Moreover, this case does not raise far-reaching issues, but rather turns on the inescapable and close connection between petitioner's peculiar common law wrongful discharge claim and particular terminology in the TWA/ALPA collective bargaining agreement.

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[11] For example, in *Deford v. Soo Line R. Co.*, 867 F.2d 1080 (8th Cir. 1989) and *Roane v. Comair*, 1989 U.S. Dist. LEXIS 797 (E.D. Ky., January 27, 1989), the courts held that claims requiring the interpretation of a collective bargaining agreement were preempted by the RLA. These cases are therefore similar to this one, where the employee's claim is preempted under either an RLA or a section 301 analysis.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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